



[BILLING CODE: 3510-22-P]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 121227743-3275-01]

RIN 0648-BC86

Fisheries of the United States; Billfish Conservation Act of 2012 Implementing Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS issues this advance notice of proposed rulemaking (ANPR) to provide background information and request public comment on potential issues related to the implementation of the Billfish Conservation Act of 2012.

DATES: Written comments regarding the issues in this ANPR must be received by 5 p.m., local time, on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2013-0004, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0004, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- **Mail:** Submit written comments to Kim Marshall, 1315 East-West Highway, SSMC3, Silver Spring, MD 20910.
- **Fax:** 301-713-1193; Attn: Kim Marshall

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kim Marshall, Fishery Policy Analyst, National Marine Fisheries Service, 301-427-8556.

SUPPLEMENTARY INFORMATION:

Background

The Billfish Conservation Act of 2012 (BCA), Pub. L. 112-183, 16 U.S.C. 1827a, was signed into law on October 5, 2012. The BCA defines “billfish” as any of the following: 1) blue marlin; 2) striped marlin; 3) black marlin; 4) sailfish; 5) shortbill spearfish; 6) white marlin; 7) roundscale spearfish; 8) Mediterranean spearfish; or 9) longbill spearfish. It exempts swordfish from the definition of billfish.

Section 4(a) of the BCA prohibits any person from offering billfish or billfish products for sale, selling them, or having custody, control, or possession of them for purposes of offering them for sale. It treats a violation of the BCA as an act prohibited by section 307 of the

Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1857).

Individuals, including recreational fishermen may possess, but not sell billfish or billfish products or have custody, control, or possession for the purposes of offering them for sale, subject to limits imposed by existing state and federal regulations.

Section 4(c) of the BCA exempts billfish caught by U.S. fishing vessels and landed in Hawaii or Pacific Insular Areas (as defined under the MSA) from the general prohibitions on sale and custody with the intent to sell in section 4(a). It also exempts billfish landed by foreign vessels in the Pacific Insular Areas and exported to markets outside the U.S. or retained within Hawaii and the Pacific Insular Areas for local consumption.

In passing the BCA, Congress recognized the conservation challenges facing billfish populations in the Atlantic and Pacific Oceans. Congress found that, despite careful management of domestic billfish fisheries, global billfish populations have declined significantly because of overfishing primarily through retention of bycatch by non-U.S. fishing fleets. See 16 U.S.C. 1827a note. In 2011, the International Union for the Conservation of Nature classified blue and white marlin as vulnerable to extinction and striped marlin as near threatened. The over harvest and export of billfish from foreign nations threatens the survival of billfish populations and the sustainability of the U.S. recreational billfish fishery. A report on trade of billfish published by the International Game Fish Association (IGFA) in June, 2007 found that the legal sale of billfish caught in the Pacific Ocean may create a market that allows billfish caught in the Atlantic Ocean to enter illegitimately into U.S. markets.

Existing federal regulations require the release of all Atlantic billfish caught by commercial fishing operations in the U.S. Exclusive Economic Zone (EEZ), prohibit the possession of billfish onboard commercial fishing vessels inside the U.S. EEZ, and prohibit the

sale of Atlantic billfish. 50 CFR 635.21(a) and (e)(2), 635.31(b). The BCA increases the protection for Atlantic billfish by prohibiting the import and sale of all billfish in the U.S., no matter where harvested, unless exempted pursuant to section 4(c) of the BCA.

The only U.S. commercial fishery for billfish occurs in Hawaii and surrounding Pacific island areas. Section 4(c)(1) of the BCA exempts billfish caught by U.S. vessels and landed in Hawaii or Pacific Insular Areas from the general prohibition on sale of billfish. Under existing regulations, seafood dealers and processors are required to use the Billfish Certificate of Eligibility (COE) to document that billfish possessed or offered for sale were not harvested from the Atlantic Ocean. See 50 CFR 635.31(b). NMFS is considering adapting the billfish COE requirements to implement the BCA by requiring that seafood dealers and processors document that billfish offered for sale qualifies for exemption from the general prohibition on the sale of billfish.

The U.S. West Coast Highly Migratory Fishery Management Plan (Plan) includes the striped marlin as a management unit species and prohibits sale of the species. As stated in the Pacific Fishery Management Council's Plan, striped marlin is considered to have far greater value as a recreational rather than commercial target species. The Plan is not the only measure addressing striped marlin. California has prohibited sale and importation of Pacific striped marlin since 1937, and with a limited exception for black marlin, marlin meat, whether fresh, smoked, canned, or preserved by any means, may not be bought or sold, or possessed or transported for the purpose of sale in the state.

Public Comments

NMFS is considering issuing regulations to implement the BCA. Rulemaking is needed to provide notice to the regulated community, increase public understanding of the elements of

the billfish prohibitions, facilitate enforcement, and ensure consistent implementation of the BCA nationally. Through this ANPR, NMFS seeks the public's views on the potential scope of any future regulations to implement the BCA, including the scope of the exemption in section 4(c) of the BCA and the possible use of a modified version of the current billfish COE to document that billfish offered for sale qualifies for exemption from the general prohibition on sale. Also, what, if any, restrictions can NMFS impose on the transportation and sale of billfish caught by U.S. vessels and landed in Hawaii or the Pacific Insular Areas?

To help determine the scope of issues to be addressed and to identify significant issues related to this action, NMFS is soliciting written comments on this ANPR. The public is encouraged to submit comments related to the specific ideas mentioned in this ANPR, as well as any additional ideas to improve implementation of the Billfish Conservation Act of 2012.

Authority: 16 U.S.C. 1827a.

Dated: March 29, 2013

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

